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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/560,373	04/28/2000	Gregory Lucius Meredith	MS147248.1	3570
27195 7590 04/06/2007 AMIN. TUROCY & CALVIN, LLP 24TH FLOOR, NATIONAL CITY CENTER 1900 EAST NINTH STREET CLEVELAND, OH 44114			EXAMINER KISS, ERIC B	
			ART UNIT 2192	PAPER NUMBER
			MAIL DATE 04/06/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notice of Non-Compliant  
Amendment (37 CFR 1.121)**

Application No.

09/560,373

Examiner

Eric B. Kiss

Applicant(s)

MEREDITH ET AL.

Art Unit

2192

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

The amendment document filed on 17 January 2007 is considered non-compliant because it has failed to meet the requirements of 37 CFR 1.121 or 1.4. In order for the amendment document to be compliant, correction of the following item(s) is required.

**THE FOLLOWING MARKED (X) ITEM(S) CAUSE THE AMENDMENT DOCUMENT TO BE NON-COMPLIANT:**

- ☐ 1. Amendments to the specification:
- ☐ A. Amended paragraph(s) do not include markings.
  - ☐ B. New paragraph(s) should not be underlined.
  - ☐ C. Other \_\_\_\_\_.
- ☐ 2. Abstract:
- ☐ A. Not presented on a separate sheet. 37 CFR 1.72.
  - ☐ B. Other \_\_\_\_\_.
- ☐ 3. Amendments to the drawings:
- ☐ A. The drawings are not properly identified in the top margin as "Replacement Sheet," "New Sheet," or "Annotated Sheet" as required by 37 CFR 1.121(d).
  - ☐ B. The practice of submitting proposed drawing correction has been eliminated. Replacement drawings showing amended figures, without markings, in compliance with 37 CFR 1.84 are required.
  - ☐ C. Other \_\_\_\_\_.
- ☒ 4. Amendments to the claims:
- ☐ A. A complete listing of all of the claims is not present.
  - ☐ B. The listing of claims does not include the text of all pending claims (including withdrawn claims)
  - ☐ C. Each claim has not been provided with the proper status identifier, and as such, the individual status of each claim cannot be identified. Note: the status of every claim must be indicated after its claim number by using one of the following status identifiers: (Original), (Currently amended), (Canceled), (Previously presented), (New), (Not entered), (Withdrawn) and (Withdrawn-currently amended).
  - ☐ D. The claims of this amendment paper have not been presented in ascending numerical order.
  - ☒ E. Other: see attached.
- ☐ 5. Other (e.g., the amendment is unsigned or not signed in accordance with 37 CFR 1.4):

For further explanation of the amendment format required by 37 CFR 1.121, see MPEP § 714.

**TIME PERIODS FOR FILING A REPLY TO THIS NOTICE:**

1. Applicant is given **no new time period** if the non-compliant amendment is an after-final amendment or an amendment filed after allowance. If applicant wishes to resubmit the non-compliant after-final amendment with corrections, the **entire corrected amendment** must be resubmitted.
2. Applicant is given **one month, or thirty (30) days, whichever is longer, from the mail date of this notice to supply the correction**, if the non-compliant amendment is one of the following: ~~a preliminary amendment, a non-final amendment (including a submission for a request for continued examination (RCE) under 37 CFR 1.114), a supplemental amendment filed within a suspension period under 37 CFR 1.103(a) or (c), and an amendment filed in response to a Quayle action.~~ If any of above boxes 1. to 4. are checked, the correction required is only the **corrected section** of the non-compliant amendment in compliance with 37 CFR 1.121.

**Extensions of time** are available under 37 CFR 1.136(a) only if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action.

**Failure to timely respond** to this notice will result in:

**Abandonment** of the application if the non-compliant amendment is a non-final amendment or an amendment filed in response to a *Quayle* action; or

**Non-entry** of the amendment if the non-compliant amendment is a preliminary amendment or supplemental amendment.

Legal Instruments Examiner (LIE), if applicable

Telephone No.

Art Unit: 2192

In the Notice of Non-Compliant Amendment mailed December 21, 2006, applicant was given one month to correct the noted deficiency under 27 CFR 1.121(c)(2). (Notice of Non-Compliant Amendment (12/21/2006).)

Applicant has been repeatedly notified of failures to comply with 37 CFR 1.121(c)(2). (Notice of Non-Compliant Amendment (07/12/2006); Notice of Non-Compliant Amendment (12/21/2006).) Despite these prior notices to applicant, the amendment filed January 17, 2007, is not compliant with 37 CFR 1.121(c)(2) because the text of subject matter added to claim 28 (in line 9, the phrase "based at least in part on") has not been shown by underlining the added text.

37 CFR 1.135(c) authorizes, but does not require, an examiner to give the applicant a new time period to supply an omission. MPEP § 714.03. Further, once an inadvertent omission is brought to the attention of the applicant, the question of inadvertence no longer exists. *Id.* Therefore, a second Office action giving another new (1 month) time period to supply the omission would not be appropriate under 37 CFR 1.135(c). *Id.* Since the period for reply set forth in the prior Office action has expired, this application will become abandoned unless applicant corrects the deficiency and obtains an extension of time under 37 CFR 1.136(a).

The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. In no case may an applicant reply outside the SIX (6) MONTH statutory period or obtain an extension for more than FIVE (5) MONTHS beyond the date for reply-set forth in an Office action. A fully responsive reply must be timely filed to avoid abandonment of this application.

Art Unit: 2192

Moreover, the examiner notes for the purpose of clarifying the record that although no formal rejection of claims 7 and 28 has been made under 35 U.S.C. § 112, first paragraph, applicant has been repeatedly put on notice that the proposed claim language raises concerns over the adequacy of the written description supporting proposed claims 7 and 28.

Although Applicant has suggested that claims 1, 7, and 28 "have been amended to make explicit that which was previously implicit," the Examiner notes **that the proposed amendments to claims 7 and 28 appear to be attempts to enter unduly broad claims.**

As Applicant has noted, the specification [describes] by example a "scheduling programming language written in XML". Specification at p. 18. However, scheduling programming languages written in a combination of XML and some other programming language, or otherwise derived from XML (as opposed to being actual XML) do not appear to have been envisioned at the time the application was filed.

At first blush, the limitations in claim 7, [regarding] an "XML-based" programming language appear to be consistent with the specification, which describes (as noted above), "a scheduling programming language written in XML". However, **the newly added limitations of claim 28, wherein the scheduling language is "based at least in part on XML" clearly embraces a much broader class of programming languages, not likewise embraced by the specification.** This raises a question as to how broadly "XML-based" from claim 7 should be interpreted. **If "XML-based" is similarly intended to cover a broad class of programming languages beyond the scope of the written description in the Specification, then claim 7 suffers similar problems to those of proposed claim 28.**

In view of the foregoing, the Examiner submits that Applicant's proposed amendments do not resolve the issues raised under 35 U.S.C. 112, second paragraph, **and may, in fact, raise additional issues under 35 U.S.C. 112, first paragraph (written description).**

(Advisory Action (11/25/2005) (emphasis added));

Parties briefly discussed the rejection of all claims under 35 U.S.C. 112, second paragraph. The Examiner indicated that the language of claim 1, "written in XML" appeared to be most consistent with the specification, and amendments to claims 7 and 28, using the same language, may overcome the rejection, pending further review of Applicant's formal submission.

(Interview Summary (12/06/2005));

Art Unit: 2192

Each amended claim has not been submitted with markings to indicate the changes that have been made relative to the immediate prior version of the claims. 37 CFR 1.121(c)(2); see Claims 7 and 28 (12/07/2005) (entered as noted in the Non-Final Rejection (01/11/2006)); **see also Advisory Action (11/25/2005) (noting a previous improper attempt to enter unduly broad claims).**

(Notice of Non-Compliant Amendment (07/12/2006) (emphasis added));

Each amended claim has not been submitted with markings to indicate the changes that have been made relative to the immediate prior version of the claims. 37 CFR 1.121(c)(2); see Claims 7 and 28 (08/09/2006); see also Notice of Non-Compliant Amendment (07/12/2006) (raising this exact issue); **Advisory Action (11/25/2005) (noting a previous improper attempt to enter unduly broad claims).**

(Notice of Non-Compliant Amendment (12/21/2006) (emphasis added).)

A handwritten signature in cursive script, appearing to read "Eric B. Kiss".

Eric B. Kiss